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Request for the inclusion of an additional item in the agenda of the sixty-third session

The scope and application of the principle of universal jurisdiction

Letter dated 29 June 2009 from the Permanent Representative of the United Republic of Tanzania to the United Nations addressed to the Secretary-General

I have the honour, on behalf of the Group of African States, to request, pursuant to rule 15 of the rules of procedure of the General Assembly, the inclusion in the agenda of the sixty-third session of the General Assembly of an additional item entitled "The scope and application of the principle of universal jurisdiction".

It will be recalled that, during the meeting of the General Committee held on 18 February 2009, Tanzania requested the postponement of the discussion on the proposed item. The postponement was requested to allow further discussion on concerns raised by some delegations about the title of the item. The present request follows extensive consultations and agreement with concerned delegations.

An explanatory memorandum in support of the above request (annex I) and a draft decision to be adopted at the conclusion of general plenary discussions (annex II) are attached to the present letter pursuant to rule 20 of the rules of procedure.

I also have the honour to request that the present letter be circulated as a document of the General Assembly.

(*Signed*) Augustine P. **Mahiga**
Ambassador

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Annex I

Explanatory memorandum

Scope and application of the principle of universal jurisdiction

1. The principle of universal jurisdiction is well established in international law. Universal jurisdiction does not apply to all international crimes, but rather to a very limited category of offences. It allows a State to exercise its domestic jurisdiction to indict and prosecute perpetrators of serious offences such as piracy, slavery, torture, genocide, war crimes and crimes against humanity occurring outside its territory irrespective of the nationality of the perpetrators. The African Union respects this principle, which is enshrined in article 4(h) of the Constitutive Act.

2. Many African States have expressed approval of the principle of universal jurisdiction on a treaty basis, and existing practice shows that many States establish a jurisdictional link with the commission and punishment of such crimes as genocide, crimes against humanity and war crimes. However, the scope and applicability of the principle of universal jurisdiction outside the context of such treaties and outside such jurisdictional links is unclear and remains yet to be settled or determined.

3. Following a request by a Conference of African Union Ministers of Justice and/or Attorneys-General held at the African Union Headquarters in Addis Ababa in April 2008, the Commission undertook a study on the application and scope of the principle of universal jurisdiction. The study dwelt exhaustively on the application of the principle of universal jurisdiction by elucidating the origin, nature, scope, applicability and effects of the concept. The study reviewed the jurisprudence of the International Court of Justice on this issue, resolutions of the General Assembly and declarations and decisions of the African Union relevant to universal jurisdiction. It also examined the legal competence of States applying the principle of universal jurisdiction. The report was prepared and presented to the Assembly of the African Union through the Executive Council in July 2008.

4. The study indicated that there was no dispute or controversy with the principle itself; the only issue was the extent of its application. Furthermore, while the International Court of Justice had not directly addressed and made a determination on the extent and applicability of the principle, judges of the International Court of Justice, particularly in the Arrest Warrant case (Yerodia), had made clear and unequivocal statements to the effect that the application of the principle was limited under international law. The study also indicated that the extent of the application of this important principle has never been discussed at the level of the United Nations. Additionally, there is no widespread State practice.

5. While the African Union fully subscribes to and supports the principle of universal jurisdiction within the context of fighting impunity as well as the need to punish perpetrators of genocide, crimes against humanity and war crimes, it is, however, concerned about its ad hoc and arbitrary application, particularly towards African leaders. The application of this principle has to be consistent with international law and the conduct of international relations.

6. In two consecutive decisions, the Assembly of Heads of State and Government of the African Union referred the issue of the principle of universal jurisdiction for discussion in the General Assembly with the view to establishing regulatory provisions for its application.

Annex II

Draft decision

The General Assembly decides to include in the agenda of its sixty-fourth session the item entitled "Scope and application of the principle of universal jurisdiction" and recommends that it be considered by the Sixth Committee at that session.